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PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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ENG

Human rights defenders in Asia

1. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms recognizes the obligation on the part of all people and organisations to be active in promoting and protecting human rights. In this submission the Asian Legal Resource Centre examines the performance of some states and civil society groups in Asia vis-à-vis the obligations under this Declaration.

2. Article 2 of the Declaration casts the primary responsibility and duty to protect, promote and implement all human rights and fundamental freedoms on the state. Sadly, during the last year developments in Asia have tended in the opposite direction. The spread of national security laws has eaten into the fabric of protection mechanisms for human rights in Asia and increasingly obstructed the enjoyment of fundamental freedoms. For example, Malaysia has extended the use of national security laws to restrict all expressions of dissent. Many persons have been detained without trial and some convicted by an unjust process that has denied them their basic rights. Internal security laws have also been tightened in India and Nepal under the pretext of controlling terrorism. Under national security laws, remand periods and monitoring of personal communications have increased, provisions for bail, legal assistance or appeal curtailed, trials held in secret, witness identities concealed, people related to or with tenuous links to suspects detained without charge, and capital punishment invoked without the accused proven guilty. These conditions have affected the implementation of all human rights and fundamental freedoms in Asian societies. The will of the society to seek expression of rights and expand freedoms is retarded—if not crushed—by these actions.

3. Article 3 of the Declaration speaks of a juridical framework within which human rights and fundamental freedoms should be implemented. However this framework in many Asian countries is so defective that immense reforms are needed to bring them up to the task. The juridical framework of Pakistan, for instance, suffered complete collapse with the military takeover; while it had many defects even before the takeover, afterwards the population came to perceive the judiciary as subordinate to the military. In Asia most police forces are seen as both not independent and also ineffective, while the military extends its influence into all aspects of society. In Indonesia for instance, despite the demise of the Soeharto dictatorship, the military grip on all areas of society remains intact. Asian law enforcement agencies lack an upstanding tradition, new institutions in the place of military ones, and resources. In Cambodia, eight years after the UN-sponsored election the judicial, prosecuting and police institutions do not constitute any kind of credible framework as required by the Declaration. In China, legal reforms are still at a very early stage, and the independence of the judiciary is recognized only in abstract. The judiciary has no powers to intervene in disputes between the state and individuals, and therefore individuals do not have adequate remedies as required by article 9 of the Declaration. The extent of the collapse of the judicial framework in Sri Lanka is evident in the total loss of confidence in the law by people there. The Sri Lankan Attorney General's department has proven unable to prosecute literally thousands of cases due to direct or indirect pressures, and a lack of resources and independent power. As for Myanmar, there is no juridical framework of any form that would meet the requirements of the Declaration. Thus violations of the rights of people by failure to comply with articles 2, 3 and 9 of the Declaration are quite noticeable in the region.

4. The Declaration casts obligations not only on states but also on individuals and groups. It is the duty of civil society organizations, educational institutes, groups promoting morality and others to be engaged in promoting a basic juridical framework within which the realization of rights is possible. Mere abstract promotion of human rights ideas—without

trying to understand and promote such a juridical framework—remains one of the defects of such groups in the region, including those in the human rights movement. There must be a common effort to find ways towards an institutional framework for the realization of rights throughout Asia and the globe.

5. Until juridical frameworks of the sort referred to in the Declaration are thoroughly developed, it is necessary to develop measures to bring to draw attention to violations, even when it may not be possible to get protection from the authorities. Given the development of global communication systems it is possible develop various forms of intervention, such as urgent appeals and special task forces. The state must be encouraged to develop protective agencies and provide the means and facilities to relevant groups by which they may exercise their protective functions. As experience in India shows, the judiciary can play an active role in independent initiatives towards urgent interventions. Civil society groups can also develop their own systems of quick communication and intervention. Experience demonstrates that people from all over the world can intervene within a short time when they are informed of violations of rights. Human rights education should also be developed to make it possible for more and more people to intervene and protect rights.

6. The Asian Legal Resource Centre welcomes the appointment of a Special Representative with a wide mandate to promote the objectives of this Declaration. The Special Representative needs the support of every state and the international community as a whole. In particular, the Special Representative needs the help of all civil society organizations. The Asian Legal Resource Centre urges the special representative to intervene on behalf of groups most exposed to violations, such as Dalits and all so-called low caste groups in India, South Asia and elsewhere. The Asian Legal Resource Centre also urges the Commissioner to allocate more resources for urgent interventions by the Special Representative.